

12-12-1999

# Handling Prevented Planting Payments

Neil Harl

*Iowa State University*, [harl@iastate.edu](mailto:harl@iastate.edu)

Follow this and additional works at: <http://lib.dr.iastate.edu/aglawdigest>



Part of the [Agricultural and Resource Economics Commons](#), [Agricultural Economics Commons](#), [Agriculture Law Commons](#), and the [Public Economics Commons](#)

---

## Recommended Citation

Harl, Neil (1999) "Handling Prevented Planting Payments," *Agricultural Law Digest*: Vol. 10 : No. 24 , Article 1.

Available at: <http://lib.dr.iastate.edu/aglawdigest/vol10/iss24/1>

This Article is brought to you for free and open access by the Journals at Iowa State University Digital Repository. It has been accepted for inclusion in *Agricultural Law Digest* by an authorized editor of Iowa State University Digital Repository. For more information, please contact [digirep@iastate.edu](mailto:digirep@iastate.edu).



Agricultural Law Press

Publisher/Editor  
Robert P. Achenbach, Jr.  
Contributing Editor  
Dr. Neil E. Harl, Esq.

\* \* \* \*

## Issue Contents

### Bankruptcy

General

Avoidable liens **190**

Plan **190**

Chapter 12

Conversion **191**

Federal Taxation

Claims **191**

Post-petition interest **191**

### Federal Agricultural Programs

Brucellosis **191**

Crop insurance **191**

Elevators **191**

Peanuts **191**

Scrapie **191**

Standards **191**

Tobacco **191**

### Federal Estate and Gift Tax

Administrative expenses **192**

Generation skipping transfers **192**

Valuation **192**

### Federal Income Taxation

Cooperatives **192**

Hobby losses **193**

Interest on taxes **193**

Interest rate **193**

Preproductive period expenses **193**

Qualified debt instruments **193**

Pension plans **193**

Returns **193**

Safe harbor interest rates

December 1999 **194**

S corporations

Election **194**

Trusts **194**

### Volume 10 Index

# Agricultural Law Digest

Volume 10, No. 24

December 10, 1999

ISSN 1051-2780

## HANDLING PREVENTED PLANTING PAYMENTS

— by Neil E. Harl\*

Proceeds from insurance, such as from hail or fire coverage, are includible in gross income in the year actually or constructively received.<sup>1</sup> In effect, destruction or damage to crops and receipt of insurance proceeds are treated as a "sale" of the crop.

Under a special provision, taxpayers on the cash method of accounting may elect to include crop insurance and disaster payments in the taxable year following the crop loss if, under the taxpayer's practice, income from sale of the crop would have been reported in the later year.<sup>2</sup> Crop insurance and disaster payments must be treated the same if received in the same taxable year.<sup>3</sup>

### Requirements for deferral

To be eligible for deferral, the insurance proceeds must be received as a result of "destruction or damage to crops" caused by "drought, flood, or any other natural disaster."<sup>4</sup> If a taxpayer establishes that a "substantial" part of the crops has in the past been reported in the year following the year of production, the taxpayer is eligible to defer the proceeds from crop insurance or disaster payments.<sup>5</sup> A taxpayer may not elect to defer only a portion of the insurance proceeds or disaster payments to the following year.<sup>6</sup> It is not completely clear how one reports crop insurance and disaster proceeds on a crop normally sold at harvest if other crops are normally carried over, but it would seem that the proceeds of a crop normally sold at harvest could not be deferred.<sup>7</sup>

It is important to note that the deferral is to the "taxable year following the taxable year of destruction or damage."<sup>8</sup> Thus, if payments are received in January of the year following the year of destruction or damage to the crops, the proceeds are taxable *in that year* and cannot be deferred to the following year. Also, there is no provision for reporting the proceeds from crop insurance or disaster proceeds in a year *preceding* the year of receipt.

### Prevented planting payments

The statute<sup>9</sup> also provides that payments for "the inability to plant crops because of such a natural disaster" are treated as insurance proceeds "received as a result of destruction or damage to crops."<sup>10</sup> That provision was apparently intended to allow prevented planting payments to be eligible for the one-year deferral—to the year following "the taxable year of destruction or damage."<sup>11</sup> Presumably, that means the taxability of prevented planting payments can be deferred to the year following the year of inability to plant crops.

A 1999 Tenth Circuit Court of Appeals case<sup>12</sup> illustrates one aspect of prevented

\*

Charles F. Curtiss Distinguished Professor in Agriculture and Professor of Economics, Iowa State University; member of the Iowa Bar.

**The next issue will be published on**

**January 3, 2000 (e-mail) and January 7, 2000 (print).**

plantings and the scope of crop insurance coverage. In that case, the plaintiff was a dryland wheat farmer in New Mexico in a region that had suffered drought conditions for several years. The plaintiff did not plant a wheat crop after determining that the moisture level was too low and would not support a crop. The plaintiff's neighbors did plant a crop of wheat and their crop failed to mature resulting in severe wind erosion to their land. The plaintiff applied for crop insurance benefits on the basis that the drought prevented the plaintiff from planting a wheat crop. Coverage under the plaintiff's policy was provided for "prevented plantings," which was defined in part as the inability "to plant the insured crop due to an insured cause of loss that is general in the area (i.e., most producers in the surrounding area are unable to plant due to similar insurable causes)."<sup>13</sup>

The local Farm Service Agency denied the plaintiff's claim and the plaintiff appealed to the National Appeals Division (NAD) of the United States Department of Agriculture. The NAD hearing officer denied the claim, holding that the plaintiff's neighbors were able to and did plant wheat so the criteria were not met for "prevented plantings." On appeal to the Tenth Circuit, the plaintiff argued that the "prevented planting" provision in the policy was unreasonable because it required the plaintiff to violate sound conservation practices to be eligible to recover under the policy. The court upheld the administrative findings on the basis that the plaintiff had not demonstrated that the insurance program's general reliance on what other farmers do as a measure for determining whether planting is "prevented" was unreasonable or not in accordance with governing law.<sup>14</sup>

#### **Involuntary conversion?**

A further question is whether the proceeds from prevented plantings are eligible for involuntary conversion treatment<sup>15</sup> inasmuch as the language of the statute states that payments received because of inability to plant crops are to be treated as insurance proceeds received as a result of "destruction or damage to crops."<sup>16</sup> If the requirements for involuntary conversion treatment are met, the proceeds can be invested in other property "similar or related in service or use to the property so converted...." within two years after the close of the taxable year in which any part of the gain is realized.<sup>17</sup>

In a 1959 ruling, a farmer collected insurance on hail damage to a wheat crop.<sup>18</sup> IRS said it was an involuntary conversion and gain could be avoided by investing the insurance proceeds in another crop of standing wheat or a harvested crop.<sup>19</sup> The ruling

points out, however, that use of the insurance proceeds to cover the costs of planting a new crop is not the acquisition of eligible replacement property.<sup>20</sup>

Thus far, there is no authority confirming that prevented planting payments can be invested in eligible replacement property as an involuntary conversion with avoidance of recognition of gain.

#### **In conclusion**

The statutory language specifying that prevented planting payments are to be treated as crop insurance proceeds for the destruction or damage to crops seems broad enough to allow involuntary conversion treatment. However, until specific authority becomes available allowing such treatment, some question will exist over such reinvestment.

#### **FOOTNOTES**

<sup>1</sup> Treas. Reg. § 1.61-4(c). See generally 4 Harl, *Agricultural Law* § 27.03[7] (1999); Harl, *Agricultural Law Manual* § 4.02[4] (1999). See also Harl, "Income Assurance: Are Recoveries Deferrable?" 8 *Agric. L. Dig.* 49 (1999).

<sup>2</sup> I.R.C. § 451(d). See Rev. Rul. 91-55, 1991-2 C.B. 784, revoking Rev. Rul. 75-36, 1975-1 C.B. 143.

<sup>3</sup> Notice 89-55, 1989-1 C.B. 696.

<sup>4</sup> I.R.C. § 451(d).

<sup>5</sup> Rev. Rul. 74-145, 1974-1 C.B. 113.

<sup>6</sup> *Id.*

<sup>7</sup> See *id.*

<sup>8</sup> I.R.C. § 451(d).

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> Snell v. Glickman, No. 98-2190, 1999 U.S. App. LEXIS 6034 (10<sup>th</sup> Cir. 1999).

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> I.R.C. § 1033.

<sup>16</sup> I.R.C. § 451(d).

<sup>17</sup> I.R.C. § 1033(a)(2).

<sup>18</sup> Rev. Rul. 59-8, 1959-1 C.B. 202.

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

## **CASES, REGULATIONS AND STATUTES**

by Robert P. Achenbach, Jr.

### **BANKRUPTCY**

#### **GENERAL-ALM § 13.03.\***

**AVOIDABLE LIENS.** The debtors had leased farm land from five different landlords. Three of the leases were written and included language that the rent was subject to a landlord's lien "as provided by law." A fourth lease was written but contained no language concerning a landlord's lien. The fifth lease was an oral lease and neither party alleged that there was any provision for a landlord's lien for the rent. The debtors sought to avoid, under

Section 545, all of the liens as statutory liens. The first three landlords argued that, because the liens were mentioned in the leases, the liens were nonavoidable consensual liens. The court held that the first three leases did not create separate liens but merely restated the landlords' statutory lien rights. In addition, the court held that, even if separate liens were created, the landlords failed to perfect the liens under the UCC. The court also allowed avoidance of the statutory landlord's lien in the other two leases. *In re Marshall* 238 B.R. 193 (Bankr. S.D. Ill. 1999).

**PLAN.** The debtor was a farm partnership with two partners. Each partner had filed for personal bankruptcy and listed the partnership debts in the cases. The partners each received